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BROWNFIELD REDEVELOPMENT

House Bill 4400 as enrolled
Public Act 145 of 2000
Sponsor: Rep. Randy Richardville

House Bill 5443 as enrolled
Public Act 144 of 2000
Sponsor: Rep. Clark Bisbee

House Bill 5444 as enrolled
Public Act 146 of 2000
Sponsor: Rep. Cameron Brown

House Committee: Economic Development
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Senate Bill 269 as enrolled
Public Act 143 of 2000
Sponsor: Sen. Bill Schuette
Senate Committee: Economic Development, International Trade and Regulatory Affairs
House Committee: Economic Development

Fourth Analysis (7-10-00)

THE APPARENT PROBLEM:

In 1996, the legislature created the Brownfield Redevelopment Program. The aim of the program is to provide funding and tax incentives for the cleanup and redevelopment of contaminated land, especially land in urban areas, so that it can become economically viable. The incentives are supposed to make "brownfield" property better able to compete with "greenfield" property, the name given to undeveloped land where businesses often prefer to locate because there are fewer obstacles to development. (These new incentives built on efforts dating back to 1982 aimed at identifying and encouraging the cleanup and development of contaminated sites, including grant programs for local governments in place since 1992.) The components of the 1996 package included a state revolving fund for low-interest loans to local units to provide funds for cleanup activities at contaminated sites; the authorization for local units to create brownfield redevelopment zones in which special cleanup plans can be implemented; the authorization of redevelopment authorities through which local units can capture increases in tax revenues from redevelopment to be used for cleanup purposes; and single business tax (SBT) credits for owners of redeveloped property in brownfield redevelopment zones. Key provisions of this program were scheduled to sunset at the end of 2000.

Supporters of these efforts say they have had some success in addressing contamination-related obstacles to redevelopment but need broadening if they are to be truly effective in promoting economic development in brownfield areas, particularly in the state's core cities. For example, currently there are limits on how "captured" taxes and other revenues can be used by redevelopment authorities; the purposes to which the funds can be used are restricted to certain specified "eligible activities." These activities are defined to

include only assessment and response activities related to environmental contamination. But redevelopment also requires other kinds of site preparation work, the construction of infrastructure improvements, and the removal of obsolete and blighted buildings. These activities should become eligible for funding out of captured tax revenues as well, say state economic development specialists. Furthermore, in some cities the greater need is for the redevelopment of blighted and obsolete property at sites where no contaminated property has been identified. These sites should also be eligible for activities paid for out of captured taxes.

The SBT credit, to cite another example, is currently capped at $1 million per site. Brownfield administrators say this cap is not sufficient to bring in "marquee" projects and should be significantly expanded. Further, the SBT credit is limited to one per taxpayer, even though some firms might want to engage in several brownfield projects. The credit should be project-based not taxpayer-based, say economic development specialists. And the credit is available only to the property developer. Sometimes, say administration spokespersons, a developer may have no tax liability for a credit to offset while a tenant or lessee of the property does. The credit should in some circumstances be transferable to tenants and lessees, they say. Moreover, the SBT credits should also be available to developments at blighted and obsolete sites and not just contaminated sites, so as to provide greater incentives to attract industrial, commercial, and residential projects to the core communities of the state.

Property tax abatements could also be useful in promoting redevelopment of brownfield sites, but they are not available as part of the current redevelopment programs. Tax abatements for buildings and improvements in newly created obsolete property tax rehabilitation districts have been proposed to promote economic development in core communities.

Legislation has been proposed by the Engler Administration to address these and some related economic development issues.

THE CONTENT OF THE BILLS:

Together, the bills in the package would extend and expand the brownfield redevelopment program and enact other new provisions related to state and local economic development efforts. Senate Bill 269 would amend the Single Business Tax Act (MCL 208.38g). House Bill 4400 would amend the Brownfield Redevelopment Financing Act (MCL 125.2625 et al.). House Bill 5443 would amend the Michigan Economic Growth Authority (MEGA) Act (MCL 207.803 et al.). House Bill 5444 would create a new act, the Obsolete Property Rehabilitation Act. Although the bills would each amend or create a separate act, they contain interlocking provisions and/or definitions. In brief, the bills would:

• Extend through 2002 current brownfield programs that would otherwise sunset at the end of 2000.

• Allow brownfield programs in core communities to apply to blighted and functionally obsolete properties, in addition to contaminated properties, including the use of SBT credits and tax increment financing.

• Increase the maximum SBT credit from $1 million to $30 million, with up to 15 credits available each year over $1 million and up to 3 credits available each year over $10 million; and allow the transfer and assignment of credits from property owners to tenants or lessees.

• Expand the uses to which tax increment finance arrangements can be put so that they go beyond environmental cleanup and include site preparation, demolition and relocation of structures, and the construction of infrastructure improvements, among others.

• Create a new, non-brownfield, SBT credit for high technology businesses.

• Provide a new large, non-brownfield, SBT credit for a firm retaining at least 500 jobs in the state through a capital investment of $250 million or more.

• Offer new property tax abatements for blighted, functionally obsolete, and contaminated property in core communities.

• Make the retention of jobs and businesses a goal of MEGA SBT credits, in addition to the creation and expansion of jobs and businesses.

More detail about the provisions in the package of bills follows.

Brownfield SBT Credits (Senate Bill 269)

** Currently, brownfield SBT credits are available only through the year 2000. The proposal would extend them through the year 2002.

** The brownfield SBT credit is currently available only for eligible investments in a project at property classified as contaminated under the Natural Resources

and Environmental Protection Act (NREPA). The proposal would allow the credit to be available as well for projects at "blighted" and "functionally obsolete" property, but the expanded credit would be primarily for use in certain specified core communities, referred to as "qualified local governmental units" in the proposed legislation. (These terms are defined later under "Key Definitions.")

** The brownfield SBT credit is currently capped at $1 million per taxpayer. The maximum amount of a single credit under the new program would be $30 million. Up to 15 projects involving credits over $1 million could be approved each calendar year and, of those, up to 3 projects could involve credits over $10 million. Up to 3 of the 15 projects carrying credits of over $1 million could be for projects outside of a qualified local governmental unit if they involved investment at contaminated property, and 1 of those could involve a credit in excess of $10 million. There would be a cap of $30 million per calendar year on total SBT credits for projects with a cost of $10 million or less; that is, a cap of $30 million per year on credits of $1 million or less.

For approval of a project carrying a credit of over $10 million, the Michigan Economic Growth Authority (MEGA) would have to determine that without the tax credit there would be no project. (However, an exception would be made for one project where construction began after January 1, 2000 and before January 1, 2001.) Credits of over $10 million would be claimed over a 10-year period, with no more than 10 percent of the credit claimed in any one year. Generally speaking, if the credits for a project totaled $1 million or less, the credit would be equal to 10 percent of the cost of the taxpayer's eligible investment, and if the credits totaled more than $1 million, the credit would be based on a percentage of investment as determined by MEGA, not to exceed 10 percent.

** The proposal divides projects into two categories: those with a cost of $10 million or less (and presumably a credit of $1 million or less) and those with a cost of more than $10 million (and presumably a credit of over $1 million). The approval process for the two categories would be different. An application for a project with a cost of $10 million or less would go to the state treasurer, and an application for a project with a cost of more than $10 million would go to MEGA.

**An application for a project with a cost of $10 million or less (with a credit of $1 million or less) would require the approval of the state treasurer. An application for a project would have to be approved or denied within 45 days. If the treasurer did not meet the 45-day deadline, the project would be considered approved. If a project was approved, the treasurer would issue a preapproval letter containing the maximum total eligible investment for the project on which credits would be claimed. If an application was denied, the taxpayer could apply again for the same project or another project.

** The Department of Treasury would be required to submit a report annually to the committees responsible for tax policy and economic development issues in the House and Senate containing, among other things, a listing of projects costing $10 million or less approved in the calendar year and the total amount of eligible investment of those projects.

**A project with a cost of over $10 million (with a credit over $1 million) would have to be approved by the Michigan Economic Growth Authority and would require the concurrence of the state treasurer (who serves on the MEGA board). MEGA would have to approve or disapprove an application for a project within 65 days of its receipt. If it failed to meet the 65-day deadline, the application would be sent to the state treasurer, who would have 5 days to approve or deny it. If the state treasurer failed to act by the 5-day deadline, the application would be considered approved. If MEGA approved an application, it would issue a preapproval letter stating, among other things, the percentage of eligible investment for the project and the maximum total eligible investment on which credits could be claimed. A copy of the preapproval letter would be sent to the Department of Treasury. An applicant who was denied a credit could reapply.

** MEGA and the state treasurer would have to consider the following criteria to the extent applicable to the type of project proposed when approving a credit: the overall benefit to the public; the extent of reuse of vacant buildings and redevelopment of blighted property; the creation of jobs; whether the eligible property was in an area of high unemployment; the level and extent of contamination alleviated, to the extent known; the level of private sector contribution; the cost gap between the site and a similar greenfield site; in cases in which the taxpayer was moving from one location to another within the state, whether the move would create a brownfield; the financial soundness of the taxpayer and the economic soundness of the project; and any other criteria that MEGA or the state treasurer, as applicable, considered appropriate for the determination of eligibility.

** A taxpayer would claim an SBT credit in the tax year in which a certificate of completion was issued. However, a credit of over $10 million would be claimed over 10 years. A certificate of completion would be issued to each qualified taxpayer when the project's completion had been verified by either the state treasurer or MEGA, depending on the size of the project. For MEGA verification, an on-site inspection would be required. A project would have to be completed not more than five years after the issuance of the preapproval letter. The certificate would state the total amount of all credits for the project, not to exceed the maximum in the preapproval letter; the total amount of the project and the eligible investment of each qualified taxpayer; the credit amount for each qualified taxpayer; and, for a credit over $10 million, the schedule on which the annual credit amount could be claimed. If a credit exceeded tax liability for a tax year, it could be carried forward for 10 years or until used up, whichever occurred first.

** Currently, only one brownfield SBT credit is available per taxpayer for all tax years. The proposal would instead allow one credit per project. A taxpayer would be eligible for more than one credit per year (but no more than one per project).

** The proposal would allow an SBT credit to be transferred from a property owner to a lessee of the property under certain circumstances. The property would have to be leased for a minimum term of 10 years, and the credit assignment would be irrevocable. If there was more than one lessee, the taxpayer could prorate the credit to each lessee. A taxpayer also could claim a portion of the credit and assign the remaining portion. A lessee could not subsequently assign a credit or any portion of a credit assigned.

** If a qualified taxpayer was a partnership, limited liability company, or subchapter S corporation, the taxpayer could assign all or a portion of a credit to its partners, members, or shareholders based on their proportionate share of ownership. Such an assignment would be irrevocable. A qualified taxpayer could, as above, claim a portion of a credit and assign the remaining portion. A partner, member, or shareholder that was an assignee could not subsequently assign a credit or a portion of a credit.

** To be eligible for a credit currently, property must be located in a brownfield redevelopment zone. The zone concept would be discontinued for future projects; credits would simply be available to eligible property, and a municipality's brownfield redevelopment authority would exercise its powers over eligible property located in the municipality.

** A credit could not be claimed based on investment related to the operation of a professional sports stadium, including a parking lot or retail store, or investment related to the operation of a casino, including a parking lot, hotel, motel, or retail store. However, this prohibition would not apply to an already existing professional sports stadium not being used by a professional sports team on the date an application related to that stadium was filed.

<u>Tax Increment Financing</u> (House Bill 4400)

** In qualified local governmental units (or core communities), tax increment financing arrangements would apply not only for contaminated property but also for blighted and functionally obsolete property.

** Also in those communities, the purposes eligible for financing would be expanded to include infrastructure improvements that directly benefit eligible property, the demolition of structures, lead or asbestos abatement, site preparation, and relocation of public buildings or operations for economic development purposes (with prior approval of MEGA). Currently, financing is restricted to baseline environmental assessment activities, due care activities, and additional response activities, as those terms are defined in the Natural Resources and Environmental Protection Act. The term "infrastructure improvements" would be defined to include a street, road, sidewalk, parking facility, pedestrian mall, alley, bridge, sewer, sewage treatment plant, property to reduce, eliminate, or prevent soil or groundwater contamination, drainage system, waterway, waterline, water storage facility, rail line, utility line or pipeline, or other similar related structure or improvement, together with necessary easements.

** If under a brownfield plan, school operating taxes were to be used for the expanded purposes cited above, MEGA would have to approve a work plan and there would have to be a development agreement between the municipality and the owner of the property. The approval of the Department of Environmental Quality (DEQ) would not be required. An authority would have to reimburse MEGA for the actual cost of reviewing a work plan. An authority would have to submit information to MEGA similar to that currently required for DEQ approval of contamination-related work plans. MEGA would have to respond within 60 days with unconditional approval; conditional approval, with necessary modifications specified; or a letter stating that more information was needed and

specifying the additions or changes required. If MEGA failed to respond in writing within 90 days after receiving a request for approval of a work plan, the eligible activities would be considered approved and the authority could proceed. (In the case of these expanded activities, any excess revenues from school operating taxes could not be captured for deposit in the local site remediation revolving fund.)

** Currently, school operating taxes can only be captured if the eligible activities to be conducted on the property are consistent with a work plan or remedial plan approved by the DEQ between July 24, 1996 and January 1, 2001. Under the proposal, this provision would be extended to January 1, 2003 and rewritten to specify that it applies to response (cleanup) activities only and not to the expanded activities cited in the paragraph above. (It would also refer to the use of captured taxes rather than the capture of taxes, so that captured taxes could only be used consistent with a work plan or remedial plan.) DEQ approval would still be required for these work plans or remedial plans. School operating taxes, moreover, could not be used for response activities that would benefit a party liable for contamination under NREPA. All taxes levied for school operating purposes that were not used for eligible activities consistent with a work plan approved by the DEQ or MEGA and that were not deposited in a local site remediation revolving fund would be distributed proportionately between the local school district and the State School Aid Fund.

** An authority could reimburse itself from captured taxes for reasonable and actual administrative and operating expenses that included, but were not limited to, baseline environmental assessments, due care activities, and additional response activities, related directly to work conducted by the authority on prospective eligible properties prior to approval of the brownfield plan and on eligible properties and for eligible activities after the approval of the plan. However, the reimbursement could come only from captured local taxes and could not exceed $75,000 for each authority in each fiscal year.

** The proposal adds new public hearing requirements for the adoption of a brownfield plan. (Currently, the law does not specifically require a hearing but requires notice and a reasonable opportunity for affected taxing jurisdictions to express concerns.) The proposal would require that public notice of a hearing be published twice in a newspaper of general circulation, the first of which would have to be published no less than 20 days or more than 40 days before the hearing, with information about the plan and a statement that maps, plats, and a plan description were available for public viewing. Interested persons would have to be given an opportunity to be heard and the local governing body would have to receive and consider written communications about the plan. Further, the local governing body would be required to notify the affected taxing jurisdictions at least 20 days before the hearing and fully inform them about the fiscal and economic implications of the plan. Officials from the affected jurisdictions would have a right to be heard at the public hearing.

** As mentioned above, the zone concept would be discontinued for future projects under the proposal, and a municipality's brownfield redevelopment authority would exercise its powers over eligible property located in the municipality. Zones established under current law would continue to exist and their boundaries could be altered subsequent to a public hearing.

** An authority established by a county could exercise its powers with respect to eligible property within a city, village, or township within the county only if that unit had concurred with the provisions of a brownfield plan applying to the eligible property. A city, village, or township, including one that was a qualified local governmental unit, could enter into a written agreement with the county in which it was located to exercise the powers granted to the city, village, or township under the act.

** MEGA would be required to submit a report annually on or before March 1 to each member of the legislature compiling information submitted by brownfield authorities seeking approval of work plans and including the amount of revenue the state would have received and each local unit of government would have received if taxes levied for school operating purposes had not been captured for the previous calendar year.

<u>Obsolete Property Tax Abatements</u> (House Bill 5444)

** A new act would be created that would allow tax abatements for commercial facilities, including residential property, that were undergoing rehabilitation. The facilities would have to be located in special districts that certain eligible communities ("qualified local governmental units" or core communities, as in the other proposals) would be authorized to establish. The abatements would be available for blighted, functionally obsolete, and contaminated properties. An exemption certificate

could be granted for one to twelve years and would have to be approved by the local legislative body and the State Tax Commission. No certificates could be granted after December 31, 2010, but an exemption in effect on that date would continue until the certificate expired. An exemption would not be available for property associated with a professional sports stadium or a casino. An exempt facility would pay a new kind of specific tax based on its value prior to rehabilitation.

A local unit, by resolution of its legislative body, could establish one or more districts containing obsolete property in an area characterized by obsolete commercial property or commercial housing property or containing obsolete commercial property owned by a qualified local governmental unit on the effective date of the new act and subsequently conveyed to a private owner. The district could be established by the local legislative body on its own initiative or upon the written request of property owners with more than 50 percent of the taxable value of the property within a proposed district. Before adopting a resolution establishing a district, the local legislative body would have to give written notice by certified mail to the owners of all real property within the proposed district and afford an opportunity for a hearing at which property owners and other residents and taxpayers could appear and be heard. Notice of the hearing would have to be provided not less than ten days or more than 30 days before the hearing.

As mentioned earlier, property owners within the district could be granted an exemption from ad valorem property taxes, except for school operating taxes and the state education tax, and instead be allowed to pay a specific tax, to be called the obsolete properties tax. It would be an annual tax paid in the same manner as the property tax. It would also be disbursed in the same manner, except that amounts that would otherwise go to intermediate or local school districts would instead go the State School Aid Fund. This tax would be based on the taxable value of the facility before rehabilitation. (The exemption is for the facility not the land and not, generally speaking, personal property.) As mentioned, the exemption would not automatically apply to school operating taxes or the state education tax. However, within 60 days after the granting of an obsolete property rehabilitation exemption certificate, the state treasurer could exclude, for a period of up to 6 years, up to one-half of the mills levied for local school operating purposes and one-half of the mills levied under the state education tax, if the treasurer determined it to be necessary to reduce unemployment, promote economic growth, and increase capital investment in qualified local governmental units. No more than 25 such exclusions could be granted each year. An exemption could be revoked by resolution of the local legislative body if the rehabilitation did not occur within the authorized time period or if the holder of the exemption certificate had not proceeded in good faith with the operation of the facility (and in the absence of circumstances beyond the certificate holder's control). A rehabilitated facility located in a renaissance zone would be exempt from the specific tax to the extent and for the duration permitted under the Michigan Renaissance Zone Act.

The owner of obsolete property within a district could file an application for an exemption certificate with the local clerk. The application would have to contain or be accompanied by a general description of the obsolete facility and the proposed use of the rehabilitated facility, the general nature and extent of rehabilitation to be undertaken, a list of the fixed building equipment that was to be part of the rehabilitation, a time schedule for the proposed work and its completion, and a statement of the economic advantages expected from the exemption, including the number of jobs to be retained or created as a result of rehabilitation, as well as the construction jobs involved. Upon receipt of an application, the local clerk would have to notify in writing the assessor of the local tax collecting unit and the legislative body of each taxing unit levying ad valorem taxes where the obsolete facility was located. Before acting on the application, the local legislative body would have to hold a public hearing and give public notice to the assessor, representatives of affected taxing units, and the general public.

The local legislative body would have to approve or disapprove the application for an exemption certificate, by resolution, within 60 days after its receipt by the clerk. Within 60 days of receiving the resolution from the local unit, the state tax commission would have to approve or disapprove the resolution. If approved, the exemption certificate would be issued to the applicant containing, among other things, the period of time authorized by the legislative body in which the rehabilitation must be completed. If the certificate was for less than 12 years, it would have to contain the factors, criteria, and objectives for extending the period of time, if any. The effective date of an exemption certificate would be the December 31 immediately following its issuance. An exemption certificate could be transferred and assigned by its holder to a new owner of the rehabilitated facility with the approval of the local unit.

An exemption certificate could not be approved unless, among other things, the rehabilitation of the facility began after the establishment of an obsolete property rehabilitation district; the completion of the rehabilitation was likely to increase commercial activity, create employment, retain employment, prevent a loss of employment, revitalize urban areas, or increase the number of residents in the community in which the facility was situated; the applicant stated in writing that the rehabilitation would not be undertaken without the exemption certificate; and the applicant was not delinquent in the payment of any taxes related to the facility.

If the taxable value of the property proposed for an exemption, considered together with exemptions previously granted, exceeded five percent of the taxable value of the local unit, the legislative body would have to make a separate finding and include a statement in its resolution that exceeding that amount would not have the effect of substantially impeding the operation of the local unit or impairing the financial soundness of an affected taxing unit.

Local units would be required to report annually to the State Tax Commission on the status of each exemption, including the current value of exempted property, the number of jobs retained or created, and new residents. The Department of Treasury would use this information in making an annual report to the committees in the Senate and the House responsible for tax policy and economic development issues. After three years, the department would have to submit to those committees an economic analysis of the costs and benefits of the new act in the three local units where the exemption had been used the most.

<u>MEGA SBT Credits/Non-Brownfield</u> (House Bill 5443 and Senate Bill 269)

** A new kind of credit would be created for qualified high technology businesses. Up to 50 of these credits could be authorized each year. A high technology business would have to agree to create at least 5 new jobs initially and an additional 25 new jobs within 5 years after the date of the agreement; the 25 jobs would have to be maintained for each year that a tax credit was authorized. The average wage for the jobs would have to be at least four times the federal minimum wage. A high technology business would also have to agree that 25 percent of its total operating expenses would be for research and development for the first three years of the written agreement.

** Currently, only 25 MEGA credits can be authorized each year. The proposal would allow any unused credits in one year to be carried over to the next year.

** MEGA could also enter into a written agreement for SBT credits with an eligible business that met either of the following criteria: 1) was located in the state on the date of its application, made new capital investment of $250 million in the state, and retained 500 full-time jobs; or 2) relocated production of a product to the state, made capital investment of $500 million in the state, and retained 500 full-time jobs. This credit could extend for up to 20 years. MEGA would determine the amount of the credit. In the second case ($500 million of investment), the credit could not be more than one or both of the following: 1) the payroll attributable to the employees performing retained jobs multiplied times the tax rate; and 2) the tax liability of the business multiplied by a fraction the numerator of which was the ratio of the value of capital investment to all of the firm's property in the state plus the ratio of payroll attributable to retained jobs to all the firm's payroll in the state, and the denominator of which was two. In the first case cited above ($250 million of investment), the maximum credit would be half the maximum in the second case.

<u>Key Definitions</u>

** The term "qualified local governmental unit" is used in the various brownfield statutes and would apply to a city with a median family income of 150 percent or less of the statewide median family income as of the 1990 decennial federal census that met one or more of the following conditions: a) was contiguous to a city with a population of 500,000 or more; b) had a population of 10,000 or more and was located outside of an urbanized area; c) had a population of 100,000 or more within a county with a population of 2 million or more as of the 1990 census; d) contained an eligible distressed area under the Michigan State Housing Development Authority Act; and e) was the central city of a metropolitan area designated by the United States Bureau of the Census. It would also apply to a township with a median family income of 150 percent or less of the statewide median family income that was either 1) contiguous to a city with a population of 500,000 or 2) that had a population of more than 10,000 and contained an eligible distressed area. Further, the definition would apply to: a city with a population of more than 20,000 or less than 5,000 located in a county with a population of 2 million or more that as of January 1, 2000 had an overall increase in state equalized valuation of real and personal property of less than 65 percent of the statewide

average increase since 1972 (as determined for the designation of eligible distressed areas under the State Housing Development Authority Act); and a village with a population of 500 or more as of the 1990 census located in an area designated as a rural enterprise community before 1998 under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993. This definition is in House Bill 5444.

** A "high-technology business" would be defined as a business whose primary business activity was high-technology activity and that used at least 25 percent of its total operating expenses for research and development in the tax year in which it filed an application for an SBT credit. The term "high-technology activity" would mean advanced computing; advanced materials; biotechnology, but not cloning or stem cell research with embryonic tissue; electronic device technology; engineering or laboratory testing; technology assisting in the assessment or prevention of threats or damage to human health or the environment; medical device technology; product research and development; advanced vehicles technology, including technology involving electric vehicles, hybrid vehicles, and alternative fuel vehicles. This definition is in House Bill 5443.

** "Blighted" property would include property that had been declared a public nuisance under a local housing, building, plumbing, fire, or other code; was an attractive nuisance to children because of physical condition, use, or occupancy; was a fire hazard or otherwise dangerous to persons or property; had utilities, plumbing, heating, or sewerage that was permanently disconnected, destroyed, removed, or rendered ineffective so that the property was unfit to use; or was tax reverted property owned by a qualified local government, a county, or the state. (The sale, lease, or transfer of tax reverted property by a qualified local governmental unit, county, or the state after the property's inclusion in a brownfield plan would not result in the loss to the property of the status as blighted.) This definition is in House Bill 4400.

** "Functionally obsolete" property would mean property that could not be used for its intended purpose because of a substantial loss in value resulting from factors such as overcapacity, changes in technology, deficiencies or superadequacies in design, or other similar factors that affect the property itself or its relationship with other surrounding property. This definition is in House Bill 4400.

** "Eligible investment" refers to demolition, construction, alteration, renovation, or improvement of buildings or site improvement on eligible property and the addition of machinery, equipment, and fixtures after the date that eligible activities have begun under a brownfield plan and after the date a preapproval letter has been issued. Leased equipment, machinery, and fixtures falls under the definition if the lease has a minimum term of 10 years or is for the expected useful life of the equipment, machinery, or fixtures, and if the owner of the equipment, machinery, or fixtures is not the qualified taxpayer. This definition is in Senate Bill 269.

BACKGROUND INFORMATION:

The following are the cities that are "qualified local governmental units" under the package, according to the Department of Treasury: Adrian, Albion, Alma, Alpena, Ann Arbor, Bangor, Battle Creek, Bay City, Benton Harbor, Big Rapids, Bronson, Burton, Cadillac, Carson City, Caspian, Cheboygan, Coleman, Dearborn, Dearborn Heights, Detroit, Dowagiac, East Lansing, Eastpointe, Ecorse, Escanaba, Ferndale, Flint, Gibraltar, Gladstone, Grand Haven, Grand Rapids, Grayling, Hamtramck, Harbor Beach, Harper Woods, Hazel Park, Highland Park, Holland, Inkster, Ionia, Iron River, Ironwood, Ishpeming, Jackson, Kalamazoo, Lansing, Lincoln Park, Livonia, Ludington, Manistee, Manistique, Marquette, Melvindale, Midland, Monroe, Mount Morris, Mount Pleasant, Muskegon, Muskegon Heights, Oak Park, Onaway, Owosso, Pinconning, Pontiac, Port Huron, River Rouge, Saginaw, Saint Louis, Sault Ste. Marie, Southfield, Stambaugh, Sturgis, Taylor, Traverse City, Trenton, Vassar, Wakefield, Warren, Wayne, Wyandotte, and Ypsilanti. Also the following townships would qualify: Benton Township, Buena Vista Township, Genesee Township, Mount Morris Township, Redford Township, and Royal Oak Township. Baldwin Village would also be included.

FISCAL IMPLICATIONS:

The state treasurer testified that the brownfield SBT credit would cost about $23 million in foregone revenue in fiscal year 2000-2001 and about $50 million in fiscal year 2001-2002. (Testimony before the Senate Committee on Economic Development, International Trade and Regulatory Affairs on 3-14-00)

ARGUMENTS:

For:

The package of bills would significantly enhance the current brownfield redevelopment program and

encourage greater redevelopment of contaminated, blighted, and functionally obsolete property in certain core communities. Administration spokespersons have said that this is part of the "administration's initiative to assure the revitalization and long-term sustainability of Michigan's core communities." The proponents say the package "will significantly advance the state's efforts to reclaim brownfield properties and maintain greenfield space." Revitalizing the state's city centers could help reduce problems associated with urban sprawl. Among other things, the package will:

– – Provide for larger SBT credits than are now available to encourage "marquee" projects and other businesses to locate in brownfields, and allow the credits to be used in core communities not only for development at contaminated sites but also at blighted and functionally obsolete sites. Three of the new credits could be worth up to $30 million. And credits could be assigned to lessees in certain circumstances and passed through to partners and shareholders.

– – Allow captured tax revenues to be put to expanded uses in core communities and at more sites. In qualifying communities, captured tax revenues could be used for infrastructure improvements, lead and asbestos abatement, site preparation, demolition of structures, and administrative and operating costs, in addition to cleanup activities.

– – Grant new property tax abatements at brownfield sites, with local approval, for the redevelopment of obsolete property in core communities.

– – Make available a new kind of SBT credit for high-technology businesses no matter where located in the state to allow Michigan to compete for coveted research and development enterprises with high paying jobs, particularly small start-up companies and young, growing firms.

– – Make available a non-brownfield SBT credit for the location of a large-scale business operation that would invest $250 million or $500 million in the state and retain 500 full-time jobs. (This is understood to apply to a new General Motors plant.) This new legislation makes SBT credits from MEGA available for job retention purposes, not just for job creation or expansion, to recognize that sometimes major employers need to construct new facilities at the same time as they downsize their workforce overall.

– – Continue the current $1 million or less SBT credits, with a $30 million per year cap, and allow them to apply to additional kinds of projects (beyond contaminated sites) in core communities. The current credits would still be available, as now, for the redevelopment of contaminated properties in non-core communities.

Against:

A number of questions and concerns have arisen about various aspects of this package of bills.

-- -- The standard argument against the tax credit and tax abatement approaches to economic development is that they involve government in picking "winners" and "losers", particularly when public officials (or quasi-public officials) are given a good deal of discretion in awarding tax breaks. Some critics of this approach urge instead that economic development is better encouraged through lower taxes across-the-board and through the promotion of a pro-business economic climate. Otherwise, the state tends to reward some new or expanding businesses with preferential tax treatment at the expense of other businesses, sometimes including firms competing directly with the new or expanding firms. Moreover, some critics of tax breaks say they do not create the new jobs they take credit for but often reward firms for jobs they would have created anyway. If there are to be special tax breaks, however, it is preferable that they be available to all who meet clearly delineated criteria and not just to a specially chosen few.

– – Is it wise to provide the MEGA board and the state treasurer so much discretion in the awarding of tax breaks? Will the public or legislature know why some are granted while others are not? If not, won't this engender suspicion and mistrust? Indeed, some business representatives have said they would prefer that the $1 million and under SBT credits be self-claiming, like other SBT credits are. That is, if a firm met the criteria, they could claim the credit on a tax return, just as SBT filers do now for other credits and just as individual taxpayers do for income tax credits. They do not face the prior approval or denial of an application for a credit.

– – Is it fair to limit various new tax captures and tax incentives to "qualified local governmental units" in the way the package does? The current definition includes some communities and excludes others with no particular justification. The definition and list of eligible communities grew somewhat incoherent as the proposal moved through the legislative process. Could the criteria for participation be made site-specific; that is, define the kinds of sites that deserve to be eligible for these new development tools no matter where such sites are located?

– – Even if enhanced SBT credits must be limited to certain core communities, why not allow other "non-core" local units to engage in expanded activities under brownfield-related tax increment finance arrangements? Then, local units could make their own decisions about the loss of local tax revenue. Similarly, all local units could be allowed to abate taxes for brownfield and blighted properties.

– – Is it necessary to have a "but for" provision in awarding the largest SBT credits? (That is, a requirement that a credit could only be awarded when the project would not be built "but for" the credit.) The object ought to be to redevelop brownfield sites and help revitalize urban areas, not to make companies threaten to leave the state in order to get a tax credit. If such a provision is necessary, is it then fair to include a special exception from the requirement? The package would do this by exempting a project described as already under construction in the year 2000.

– – Some people have proposed expanding tax incentives for the development of brownfields by reducing school operating taxes significantly (from the current 24 mills) for new commercial property in brownfields. Rather than being a loss in revenue, this would bring in new revenue to schools that otherwise wouldn't exist.

Response:

It is important to keep a strong focus on core communities where blighted and obsolete (and contaminated) properties predominate. It also essential to keep control over cost of the program, by limiting the number and size of credits, for example, or limiting the localities where certain kinds of credits, abatements, and tax increment financing arrangements are available. Focusing on core communities and controlling costs are the aim of (and justification for) some of the more controversial provisions in the package. It should be noted that the previously available brownfield credits, for which non-core communities are eligible, would continue to be available under this package.

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#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.